

§ 1.42-0

a single consolidated return, an election (or revocation) must be made by the designated member by satisfying the requirements of paragraph (b)(2) or (b)(3) of this section (whichever applies), and such election (or revocation) by the designated member shall be binding on all the members of the group for the credit year to which the election (or revocation) relates. If the designated member fails to timely make (or revoke) an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

(ii) *Designated member.* For purposes of this paragraph (b)(4) of this section, for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under paragraph (c) of this section based on the amount of credit reported on the original timely filed Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (either the method described in section 41(a) or the AIRC method of section 41(c)(4)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greater group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2005 taxable year, the group credit using the method described in section 41(a) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the 2005 taxable year, the group credit using the AIRC method is \$15x. Under the AIRC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the AIRC method. Because the group credit is greater using the AIRC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, C's section 41(c)(4) election is binding on all the

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members of the group for the 2005 taxable year.

(5) *Effective date.* These regulations are applicable for taxable years ending on or after November 9, 2006. For taxable years ending on or after May 24, 2005, and before November 9, 2006, see § 1.41-8T(b)(5) as contained in 26 CFR part 1, revised April 1, 2006.

[T.D. 9296, 71 FR 65732, Nov. 9, 2006; 71 FR 70875, Dec. 7, 2006]

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This section lists the paragraphs contained in §§ 1.42-1 and 1.42-2.

§ 1.42-1 [Reserved]

§ 1.42-2 *Waiver of requirement that an existing building eligible for the low-income housing credit was last placed in service more than 10 years prior to acquisition by the taxpayer.*

- (a) Low-income housing credit for existing building
- (b) Waiver of 10-year holding period requirement
 - (c) Waiver requirements
 - (1) Federally-assisted building
 - (2) Federal mortgage funds at risk
 - (3) Statement by the Department of Housing and Urban Development or the Farmers' Home Administration
 - (4) No prior credit allowed
 - (d) Application for waiver
 - (1) Time and manner
 - (2) Information required
 - (3) Other rules
 - (4) Effective date of waiver
 - (5) Attachment to return
 - (e) Effective date of regulations

[T.D. 8302, 55 FR 21189, May 23, 1990]

§ 1.42-1 Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency.

(a)-(g) [Reserved]. For further guidance, see § 1.42-1T(a) through (g).

(h) *Filing of forms.* Unless otherwise provided in forms or instructions, a completed Form 8586, "Low-Income Housing Credit," (or any successor form) must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). Unless otherwise provided in forms or instructions, a completed

Form 8609, “Low-Income Housing Credit Allocation and Certification,” (or any successor form) must be filed by the building owner with the IRS. The requirements for completing and filing Forms 8586 and 8609 are addressed in the instructions to the forms.

(i) [Reserved]. For further guidance, see § 1.42-1T(i).

(j) *Effective dates.* Section 1.42-1(h) applies to forms filed on or after November 7, 2005. The rules that apply for forms filed before November 7, 2005 are contained in § 1.42-1T(h) and § 1.42-1(h) (see 26 CFR part 1 revised as of April 1, 2003, and April 1, 2005).

[T.D. 9112, 69 FR 3827, Jan. 27, 2004, as amended by T.D. 9228, 70 FR 67356, Nov. 7, 2005]

§ 1.42-1T Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency (temporary).

(a) *In general*—(1) *Determination of amount of low-income housing credit.* Section 42 provides that, for purposes of section 38, a low-income housing credit is determined for a building in an amount equal to the applicable percentage of the qualified basis of the qualified low-income building. In general, the credit may be claimed annually for a 10-year credit period, beginning with the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. If, after the first year of the credit period, the qualified basis of a building is increased in excess of the qualified basis upon which the credit was initially determined, the allowable credit with respect to such additional qualified basis is determined using a credit percentage equal to two-thirds of the applicable percentage for the initial qualified basis. The credit for additions to qualified basis is generally allowable for the remaining years in the 15-year compliance period which begins with the first taxable year of the credit period for the building. In general, the low-income housing credit is available with respect to buildings placed in service after December 31, 1986, in taxable years ending after that date. See section 42 for the definitions of “qualified low-income

building”, “applicable percentage”, “qualified basis”, “credit period”, “compliance period”, and for other rules relating to determination of the amount of the low-income housing credit.

(2) *Limitation on low-income housing credit allowed.* Generally, the low-income housing credit determined under section 42 is allowed and may be claimed for any taxable year if, and to the extent that, the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency. The aggregate amount of housing credit allocations that may be made in any calendar year by all housing credit agencies within a State is limited by a State housing credit ceiling, or volume cap, described in paragraph (b) of this section. The authority to make housing credit allocations within the State housing credit ceiling may be apportioned among the State and local housing credit agencies, under the rules prescribed in paragraph (c) of this section. Upon apportionment of the State housing credit volume cap, each State or local housing credit agency receives an aggregate housing credit dollar amount that may be used to make housing credit allocations among qualified low-income buildings located within an agency’s geographic jurisdiction. The rules governing the making of housing credit allocations by any state or local housing credit agency are provided in paragraph (d) of this section. Housing credit allocations are required to be taken into account by owners of qualified low-income buildings under the rules prescribed in paragraph (e) of this section. Exceptions to the requirement that a qualified low-income building receive a housing credit allocation from a State or local housing credit agency are provided in paragraph (f) of this section. Rules regarding termination of the authority of State and local housing credit agencies to make housing credit allocations after December 31, 1989, are specified in paragraph (g) of this section. Rules concerning information reporting by State and local housing credit agencies and owners of qualified low-income buildings are provided in paragraph (h)